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SRI CLYDE COLLINS,

Plaintiff,

05 Civ. 7484 (JGK)

- against -

MEMORANDUM OPINION
AND ORDER

GLENN S. GOORD, et al.,

Defendants.

JOHN G. KOELTL, District Judge:

Defendant Gene McConnell requests leave to file a supplemental summary judgment motion to argue that the plaintiff's remaining denial of access to the courts claim should be dismissed because the plaintiff received an updated copy of prison rules and regulations, and therefore his Article 78 petition ultimately would have been denied. Any arguments could have and should have been made in the original motion for summary judgment.

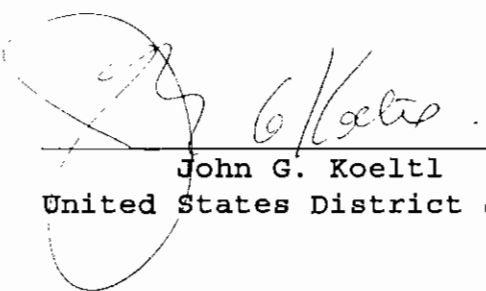
Moreover, the essential thrust of the § 1983 claim in this case is not that the plaintiff's Article 78 petition would have prevailed, but rather that the plaintiff was prevented from pursuing a non-frivolous claim in state court. At the time the plaintiff filed his Article 78 petition, it could not be said that his claim was factually or legally frivolous. (See Opinion and Order, dated Sept. 20, 2008 "Opinion", at 26-29.) Even if the defendant ultimately would have produced evidence that

defeated the plaintiff's underlying claim, the plaintiff nonetheless had a constitutional right to present his claim to a court to have it decided. (See Opinion at 29.)

The defendant's application is therefore **denied**.

SO ORDERED.

Dated: New York, New York
November 20, 2008



John G. Koeltl
United States District Judge